IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 280 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

RAJENDRAKUMAR MANEKLAL (INDL)

Appearance:

1. INCOME TAX REFERENCE No. 280 of 1994
MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment years 1974-75, 1975-79 and 1979-80 :-

> "Whether the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to exclude the dividend income from 478 shares of Calico Mills from the assessment of the assessee?"

2. Rajendrakumar Maneklal (HUF) originally owned 478 shares of Calico Mills. According to the assessee, a partial partition had taken place on 19.10.1971 under which the said shares had gone to the share of Rajendrakumar Maneklal (Indl.), who is the assessee. The Income-tax Officer did not recognize the said partition and the order of the Income-tax Officer was ultimately confirmed by the Appellate Tribunal in R.A. No. 633/Ahd/1986. Thus, according to the final order of the Appellate Tribunal, the dividend income was assessable in the hands of HUF and not in the hands of the individual. The Income-tax Officer has assessed the dividend income in the hands of the assessee (Individual) on protective basis for all these three years. The Deputy Commissioner of Income-tax (Appeals) has directed the Income-tax Officer to pass proper order in conformity with the order of the Tribunal. The Department went in appeal before the Tribunal and the ground raised was that the Commissioner of Income-tax (Appeals) had erred in directing the Income-tax Officer to exclude dividend income from 478 shares of Calico Mills from assessment of assessee. It was submitted before the Tribunal on behalf of the Department that since the point in controversy was pending before the High Court for opinion, the department had raised the ground in order to keep the issue alive. The Tribunal confirmed the directions given by the first appellate authority. Hence, the present reference.

3. We have heard Mr Mihir H Joshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

4. At the hearing of this reference, our attention is invited to the decision dated 24.9.2001 of this Court in Income-tax Reference No. 47 of 1987 which was between Rajendrakumar Maneklal (HUF) and the Commissioner of Income-tax. The said reference was disposed of by this Court in the following terms :-

> "Earlier the parties had come up to this Court.

When the CIT (Appeals) condoned the delay and partly allowed the appeal filed by the assessee, the Tribunal interfered with that order. However, this Court set aside the order of the Tribunal and restored the order of CIT (Appeals) in condoning the delay. The controversy between the parties on merits was therefore required to be resolved by CIT (Appeals). The controversy was about validity of the partial partition. The learned counsel for the parties are not in a position to state as to whether the controversy has been finally resolved or not. For want of definite information on that question we decline to answer the question referred in this reference and remand the matter to the Tribunal for deciding the controversy which is the subject matter of the present reference in light of the decision on the question of partial partition.

The reference stands disposed of accordingly with no order as to costs."

5. In view of the fact that the controversy about validity of partial partition is still stated to be pending, in the present reference we decline to answer the question and remand the matter to the Tribunal for deciding the controversy which is the subject matter of the present reference in light of the decision on the question of partial partition and in light of the decision in the reference of Rajendrakumar Maneklal (HUF).

6. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-